

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

**SHEILA A. BARBER and
RICK R. KREMER,**

Defendants.

8:05CV160

ORDER

This matter is before the court on defendants' request for trial in Lincoln (*see* #5). Plaintiff requested trial in Omaha at the time the complaint was filed. This issue is now governed by NECivR 40.1, which provides:

- (b) **Requests for Place of Trial.** The plaintiff at the time of filing a complaint in a civil action or the removing party at the time of filing a petition for removal shall make written request for trial of the case at Omaha, Lincoln, or North Platte. Each defendant or third-party defendant at the time of filing that defendant's first pleading in a civil action, or the plaintiff in a removed action within ten (10) days after service of the notice of removal, may file a written request for trial at Omaha, Lincoln, or North Platte. *If the request is for a place different from that requested by the plaintiff, third-party plaintiff, or removing party, it must be accompanied by a supporting affidavit.*
- (1) **Form of Request.** The request for place of trial may be a separate pleading or may be endorsed upon the complaint or other initial pleading, and shall be served upon each party.
- (2) **Conflicting Requests.** The judge may resolve conflicting requests without oral argument. Except for cases governed by the special rules for the Nebraska docket and for the death penalty, *see* NEGenR 1.4(a)(5) and (6), the judge shall consider the convenience of the litigants, witnesses, and counsel when deciding the place of trial.
- (3) **Amended Request.** A party may amend an initial or opposing request for place of trial at any time during the pendency of the action *if material circumstances bearing on the proper place of trial change.*

(Emphasis added).

Defendants have not provided the required affidavit and have not demonstrated that their inconvenience in having trial in Omaha strongly outweighs the inconvenience the plaintiff would suffer if venue were transferred to Lincoln. *See Nelson v. Bekins Van Lines Co.*, 747 F. Supp. 532, 535 (D. Minn. 1990).

IT THEREFORE IS ORDERED that defendants' request for trial in Lincoln is denied, without prejudice to defendants filing an amended request pursuant to NECivR 40.1(b)(3) if there is a material change of circumstances bearing on the proper place of trial.

DATED July 7, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**